1946 **File No.** B-Tenancy 46

Legal Department Part I

B **BRANCH**

P 37(B) 1947

Subject:—

A Bill to reenact the Bombay Tenancy (Amendment) Act, 1941, and to amend the Bombay Tenancy Act 1939.

L.A Bill No. VII of 1946.

Bom. Act No. XXVI of 1946

For extracts from the Proceedings of the B.L.A. and B.L.C. pl. see part II

File No. B. Tenancy/46 part I & II Combined

Gen. 194 e.

537-B

Office of the R.L.A.

A tentative draft tenancy Bill is sent herewith as settled in consultation with Secretary, R.D. As it is urgently x required by him the R.L.A. has not been able to scrutinise the Bill carefully in the short time at his disposal. Since however the draft Bill is only a tentative one, careful scrutiny has been held over till the papers are returned to L.D.for putting xh the Bill in final shape.

Sd/-
22.6

For Remembrancer of Legal Affairs.

U.R. to R.D. , No. 76-L , dated the 22nd June 1946.

S.C. 16/7
4 copies.

Office of the R.L.A.

Please see linked x file below.

2. The amendments of sections 7, 14 and 15 of the Bombay Tenancy Act, 1939, have been incorporated in the draft Bill furnished with the linked case.

3. The proposed amendment of section 23 is inopt. However, as desired by Secretary, R.D. in the sta discussion penalty has been provided for in section 23.

Sd/-
22.6

For Remembrancer of Legal Affairs.

U.R. to R.D. , No. 77-L , dated the 22nd June 1946.

S.C. 16/7
4 copies.

BILLS.

A Bill to re-enact the Bombay Tenancy (Amendment) Act, 1941 and to amend the Bombay Tenancy Act, 1939.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 187-L
Council Hall, Poona, 11th July 1946.

Memorandum from the Revenue Department No. 1140/45-F, dated the 11th 1946. Transferring for necessary action, the papers relating a Bill to re-enact the Bombay Tenancy (Amendment) Act, 1941, and to amend the Bombay Tenancy Act, 1939.

RESOLUTION .- The Bill with the Statement of Objects and Reasons should be forwarded to the Manager, Government Central Press, Bombay, for publication in the Bombay Government Gazette, dated the 12th July 1946, as Bill No. VII of 1946.

2. The Bill and the Statement should be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette, on the 15th July 1946.

3. The dates of the various publications should be reported to the Secretary to the Bombay Legislative Assembly.

By order of the Governor of Bombay.

Sd/-K.M.Chitnis,
Assistant Secretary to the Government of Bombay.
Legal Department.

To

The Manager, Government Central Press, Bombay (with the Bill and S.O.R. and with a request that 250 Gazette copies of the Bill and the Statement ma y be forwarded to the Secretary to the Bombay Legislative Assembly for distribution to the Members of the Bombay Legislativo Assembly and 25 copies for the xx use of t Legal Department).

The Revenue Department.)
*The Oriental Translator to Government.) with a copy
The Secretary to the Bombay Legislative Assembly.) of the Bill.

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*with five extra copies of the Bill.

S.C. 16/8
4 copies.

No.- 7714

Legal Department,

Bombay Castle, 4th November 1946.

From

P.N.MOos , Esquire, C.I.E., I.C.S.,

Secretary to the Government of Bombay.

To

The Secretary to the Governor of Bombay.

Subject .- A Bill to re-enact the Bombay Tenancy (Amendment) Act, 1941, and to amend the Bombay Tenancy Act, 1939.

Sir,

With reference to section 75 of the Government of India Act, 1935, I am directed to forward herewith for the assent of His Excellency the Governor, an authentic copy of a Bill to re-enact the Bombay Tenancy (Amendment) Act, 1941, and to amend the Bombay Tenancy Act, 1939, which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council held on the 13th September 1946 and the 11th October 1946 respectively.

2. None of the provisions of the Bill affects any special responsibility of the Governor under section 52(1) of the Government of India Act, 1935 or falls within the purview of clause (a), (b), (c) and (d) of paragraph XVII of the Instrument of Instructions to the Governor of Bombay.

3. The subject-matter of the Bill falls under entries 2, 21 and 39 in List II in the Seventh Schedule to the Government of India Act, 1935.

4. The Bill does not contain any provision repugnant to the provisions of any ~~xx~~ earlier Federal law or an existing Indian law with respect to any of the matters enumerated in

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4 copies.

the Concurrent Legislative List. It is not therefore necessary to reserve the Bill for consideration of the Governor General with reference to section 107(2) of the Government of India Act, 1935.

5. The date on which His Excellency the Governor's Assent is given may kindly be entered in the endorsement.

6. I am also to forward herewith one copy of

	EACH OF
1. Bill as introduced in the Bombay Legislative Assembly with the Statement of Objects and Reasons.	the papers noted in the margin.
2. Report of the Select Committee together with the Bill as amended by the Select Committee.	
3. Bill as read for the third time and passed by the Bombay Legislative Assembly and as introduced in the Bombay Legislative Council.	
4. Bill as read for the third time and passed by the Bombay Legislative Council.	
5. Extracts from the proceedings of the Bombay Legislative Assembly dated the 17th 18th, 19th, 26th, July and 7th, 10th, 11th, 12th and 13th September and 12th October 1946 and of the Bombay Legislative Council dated the 9th, 10th and 11th October 1946.	

I have the honour to be
Sir,
Your most obedient servant.

S[illegible]/-P.N.M.
4-11-46

Secretary to the Government of Bombay.
Legal Department.

Through
The Secretary to the Government of Bombay,
Revenue Department,

S.C. 17/8

No. GS. 4061.

Office of the Governor's Secretary
Government House,

From

D.Symington, Esquire, CIE, ICS.
Secretary to the Governor of Bombay.

To

The Secretary to Government.
Legal Department, Bombay.

Bombay , 6th November 1946.

Subject .- THE BOMBAY TENANCY (AMENDMENT) BILL, 1946.

Sir,

With reference to your letter No. 7714, dated the 4th November 1946, I am directed to return herewith, with His Excellency the Governor's assent signified thereon, the copy of the Bombay Tenancy (Amendment) Bill, 1946.

Your obedient servant.

Secretary to the Governor of Bombay.

S.C. 17/7

4 copies.

Acts.
Publication of the Bombay Tenancy (Amendment) Act, 1946.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 7765

Bombay Castle, 7th November 1946.

Letter to the Secretary to the Governor , No. 7714, dated 4th November 1946.

Letter from the Secretary to the Governor, No. GS. 4061, dated the 6th November 1946.

"With reference to your letter No. 7714, dated the 4th November 1946, I am directed to return herewith, with His Excellency the Governor's assent signified thereon, the copy of the Bombay Tenancy (Amendment) Bill, 1946.

RESOLUTION.- The law should be published as Bombay Act No. XXVI of 1946 in the Bombay Government Gazette, dated the 7th November 1946.

2. The A ct should be translated into Marathim Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Revenue Department with reference to the memorandum from that Department No. 1140/45-F, dated the 11th July 1946.

By order of the Governor of Bombay.

Sd/- S.W.DHURANDHAR,

Additional Assistant Secretary to Government.

Legal Department.

To

The Manager, Government Central Press, Bombay 9with a copy of the Act and with a request that 15 Gazette copies of the Act may be forwarded to the Legal Department).
The Revenue Department.
*The Oriental Translator to Government.) With a copy
The Secretary to the Bombay Legislative Council,)
The Secretary to the Bombay Legislative Assembly,) of the Act.
The Director of Publicity , Bombay.)

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*with five extra copies of the Act.

S.C. 17/7
4 copies.

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L. A. BILL No. VII OF 1946.

A Bill to re-enact the Bombay Tenancy (Amendment) Act, 1941, and to amend the Bombay Tenancy Act, 1939.

(As published in the " Bombay Government Gazette " of the 12th July 1946.)

WHEREAS in view of the provisions of sub-section (*4*) of section 93 of the Government of India Act, 1935, it is expedient to re-enact the Bombay Tenancy (Amendment) Act, 1941 ;

26 Geo. 5, Ch. 2.

Bom. VII of 1941.

AND WHEREAS it is expedient to amend the Bombay Tenancy Act, 1939, for the purposes hereinafter appearing ; It is hereby enacted as follows :—

Bom. XXIX of 1939.

Short title, extent and commencement.

1. (*1*) This Act may be called the Bombay Tenancy (Amendment) Act, 1946.

(*2*) It extends to the whole of the Province of Bombay except the City of Bombay.

(*3*) It shall come into force on such date as the Provincial Government may by notification in the Official Gazette appoint in this behalf.

Repeal and re-enactment of sections 2 to 7 of Bom. VII of 1941.

2. Sections 2 to 7 of the Bombay Tenancy (Amendment) Act, 1941, are repealed and re-enacted.

Bom. VII of 1941.

Amendment of section 2 of Bom. XXIX of 1939.

3. In section 2 of the Bombay Tenancy Act, 1939 (hereinafter called " the said Act "), in clause (1) the words " but does not include cutting of grass or wood only " shall be deleted.

Bom. XXIX of 1939.

MO-II Bk H 577—1

Insertion of new Chapter IA in Bom. XXIX of 1939.

4. After section 2 of the said Act, the following new Chapter shall be inserted, namely :—

"CHAPTER IA.

TENANTS.

Tenants.

2A. (*1*) A person cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not—

(*a*) a member of the owner's family, or

(*b*) a servant or hired labourer cultivating the land under the personal supervision of the owner or any member of the owner's family,

unless the owner has within six months of the coming into force of the Bombay Tenancy (Amendment) Act, 1946, Bom. of 1946. made an application to the Mamlatdar within whose jurisdiction the land is situated for a declaration that the person is not a tenant.

(*2*) Where an application under sub-section (*1*) has been made and the Mamlatdar refuses to make such declaration and the Mamlatdar's decision is not set aside by the Collector in appeal under sub-section (*3*) of section 13 or by the Provincial Government under section 28, the person shall be deemed to be a tenant for the purposes of this Act."

Amendment of section 3 of Bom. XXIX of 1939.

5. In section 3 of the said Act—

(*1*) for clause (*i*) the following shall be substituted, namely :—

"(*a*) he has held such land continuously for a period of not less than six years immediately preceding either—

(*i*) the first day of January 1938, or

(*ii*) the first day of January 1945 ; and " ;

(*2*) clause (*ii*) shall be lettered as clause (*b*) ;

(*3*) in Explanations I and II after the words and figures " the first day of January 1938 " the words and figures " or the first day of January 1945, as the case may be," shall be inserted.

Insertion of new section 3A in Bom. XXIX of 1939.

6. After section 3 of the said Act, the following new section shall be inserted, namely :—

Tenants on expiry of six months from coming into force of Bom. of 1946 to be deemed protected tenants.

"3A. (*1*) Every tenant shall, on the expiry of six months from the date of the coming into force of the Bombay Tenancy (Amendment) Act, 1946, be deemed to Bom. of 1946. be a protected tenant for the purposes of this Act and his rights as such protected tenant shall be recorded in the Record of Rights, unless his landlord has within the said period made an application to the Mamlatdar within whose jurisdiction the land is situated for a declaration that the tenant is not a protected tenant.

Insertion of new Chapter IA in Bom. XXIX of 1939.

4. After section 2 of the said Act, the following new Chapter shall be inserted, namely :—

"CHAPTER IA.

TENANTS.

Tenants.

2A. (*1*) A person cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not—

(*a*) a member of the owner's family, or

(*b*) a servant or hired labourer cultivating the land under the personal supervision of the owner or any member of the owner's family,

unless the owner has within six months of the coming into force of the Bombay Tenancy (Amendment) Act, 1946, Bom. of 1946. made an application to the Mamlatdar within whose jurisdiction the land is situated for a declaration that the person is not a tenant.

(*2*) Where an application under sub-section (*1*) has been made and the Mamlatdar refuses to make such declaration and the Mamlatdar's decision is not set aside by the Collector in appeal under sub-section (*3*) of section 13 or by the Provincial Government under section 28, the person shall be deemed to be a tenant for the purposes of this Act."

Amendment of section 3 of Bom. XXIX of 1939.

5. In section 3 of the said Act—

(*1*) for clause (*i*) the following shall be substituted, namely :—

"(*a*) he has held such land continuously for a period of not less than six years immediately preceding either—

(*i*) the first day of January 1938, or

(*ii*) the first day of January 1945 ; and ",

(*2*) clause (*ii*) shall be lettered as clause (*b*) ;

(*3*) in Explanations I and II after the words and figures "the first day of January 1938" the words and figures "or the first day of January 1945, as the case may be," shall be inserted.

Insertion of new section 3A in Bom. XXIX of 1939.

6. After section 3 of the said Act, the following new section shall be inserted, namely :—

Tenants on expiry of six months from coming into force of Bom. of 1946 to be deemed protected tenants.

"3A. (*1*) Every tenant shall, on the expiry of six months from the date of the coming into force of the Bombay Tenancy (Amendment) Act, 1946, be deemed to Bom. of 1946. be a protected tenant for the purposes of this Act and his rights as such protected tenant shall be recorded in the Record of Rights, unless his landlord has within the said period made an application to the Mamlatdar within whose jurisdiction the land is situated for a declaration that the tenant is not a protected tenant.

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(2) Where an application under sub-section (1) has been made and the Mamlatdar refuses to make such declaration and the Mamlatdar's decision is not set aside by the Collector in appeal under sub-section (3) of section 13 or by the Provincial Government under section 28, the tenant shall be deemed to be a protected tenant for the purposes of this Act and his rights as such protected tenant shall be recorded in the Record of Rights."

Amendment of section 4 of Bom. XXIX of 1939.

7. In section 4 of the said Act—

(a) in sub-section (1)—

(1) for the first paragraph the following shall be substituted; namely :—

"Every tenant shall be deemed to be a protected tenant for the purposes of this Act, if he—

(a) held any land and cultivated it personally continuously for a period of not less than six years immediately preceding the first day of April 1937 and was evicted from such land on or after such date, or

(b) held any land and cultivated it personally continuously for a period of not less than six years immediately preceding the first day of April 1944 and was evicted from such land on or after such date :"

(2) in the proviso after the words "such rent" the words, brackets and letter "in cases falling under clause (a)" shall be inserted and after the words "is situated" the words, brackets, letter and figures "and in cases falling under clause (b) within 4 months from the date on which the Bombay Tenancy (Amendment) Act, 1946, comes into force" shall be added;

Bom. of 1946.

(b) in sub-section (2)—

(1) after the words "to the landlord" the words, brackets, letter and figure "in cases falling under clause (a) of sub-section (1)" and after the words "is situated" where they occur for the first time the words, brackets, letter and figures "and in cases falling under clause (b) of sub-section (1) within one year after the coming into force of the Bombay Tenancy (Amendment) Act, 1946" shall be inserted; and

Bom. of 1946.

(2) for clauses (a) and (b) the following shall be substituted, namely :—

"(a) in cases falling under clause (a) of sub-section (1)—

(i) if the land has been leased out by the landlord for a period expiring after the 31st day of May immediately following the date of the coming into force of this section in the area in which the land is situated, from the date on which such lease expires; and

(*ii*) in other cases, from the 1st day of June immediately following the date of the coming into force of this section in the area in which the land is situated ;

(*b*) in cases falling under clause (*b*) of sub-section (*1*)—

(*i*) if the land has been leased out by the landlord for a period expiring after the 31st day of May immediately following the date of the coming into force of the Bombay Tenancy (Amendment) Act, 1946, from the date on which such lease expires ; and Bom. of 1946.

(*ii*) in other cases from the 1st day of June immediately following the date of the coming into force of the Bombay Tenancy (Amendment) Act, 1946." Bom. of 1946.

Amendment of section 5 of Bom. XXIX of 1939.

8. In section 5 of the said Act—

(*a*) in sub-section (*1*) the words "or in the absence of any such agreement the rent payable according to the usage of the locality or if there is no such agreement or usage, or" shall be deleted and for the words "or usage," the words "the rent payable shall be" shall be substituted ;

(*b*) in sub-section (*2*)—

(*1*) for the words "such tenant" where they occur for the second time the words and figures "the landlord has on application under section 13 obtained a declaration from the Mamlatdar that such tenant" shall be substituted ;

(*2*) for the word "fails" wherever it occurs the words "has failed" shall be substituted ;

(*3*) in clause (*a*) after the words "if any" the words, brackets, figures and letter "in cases falling under sub-clause (*i*) of clause (*a*) of section 3" shall be inserted and the following shall be added at the end, namely :—

"and in cases falling under sub-clause (*ii*) of the said clause for the year ending on 31st day of March of the year immediately preceding the year in which the Bombay Tenancy (Amendment) Act, 1946, comes into force, within four months from the date of the coming into force of the said Act ;" Bom. of 1946.

(*4*) in clause (*b*) after the words "any year" the words, brackets and letter "subsequent to the year referred to in clause (*a*) applicable to his case" shall be inserted.

Amendment of section 7 of Bom. XXIX of 1939.

9. In section 7 of the said Act—

(*1*) in sub-section (*1*) after the words "if the landlord" the following shall be inserted, namely :—

"has obtained a declaration from the Mamlatdar within whose jurisdiction the land is situated that he"

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(2) in sub-section (2) for the portion beginning with the words "the tenant" where they occur for the first time and ending with the words "the receipt thereof" the following shall be substituted, namely :—

"the landlord shall forthwith restore possession of the land to the tenant whose tenancy was terminated by him, unless he has obtained from the tenant his refusal in writing to accept the tenancy on the same terms and conditions or has offered in writing to give possession of the land to the tenant on the same terms and conditions and the tenant has failed to accept the offer within three months of the receipt thereof."

(3) after sub-section (2) the following new sub-sections shall be inserted, namely :—

"(2A) Where a landlord intends to lease out any land, he shall first offer in writing the tenancy of such land to the protected tenants whose tenancies have been terminated by him and forthwith give possession of the land to any one of them who may be willing to accept the tenancy whether at an agreed rent or subject to the determination of the rent under section 12. If the landlord and the tenant do not come to an agreement as to the rent payable for the land, on an application made by either party the Mamlatdar shall determine under section 12 the reasonable rent payable by the tenant.

(2B) If a tenant refuses in writing to accept the tenancy terminated under sub-section (1) or fails to accept the offer made under sub-section (2), the landlord shall offer in writing to the other protected tenants whose tenancies have been terminated by him, possession of the land on the same terms and conditions and forthwith give possession of the land to any one of them who may be willing to accept the offer."

(4) in sub-section (4) for the words, brackets and figure "After the tenant has recovered possession under sub-section (2)" the following shall be substituted, namely :—

"After a tenant has been put in possession under sub-section (2) or (2B)";

(5) for sub-section (5) the following sub-sections shall be substituted, namely :—

"(5) If at any time the tenant makes an application under section 13 to the Mamlatdar and satisfies him that the landlord has failed to comply within a reasonable time with the provisions of sub-section (2), (2A) or (2B), as the case may be, the tenant shall be entitled on a direction by the Mamlatdar to obtain immediate possession of the land and to such compensation as may be awarded by the Mamlatdar for any loss caused

to the tenant by eviction and by failure on the part of the landlord to restore or give possession of the land to him as required by sub-section (*2*), (*2A*) or (*2B*), as the case may be.

(*6*) Every landlord who fails to comply with the provisions of sub-section (*2*), (*2A*) or (*2B*) shall, on conviction, be punishable with fine which may extend to Rs. 1,000 :

Provided that no compensation shall be awarded under sub-section (*5*) to a tenant whose tenancy was terminated under a decree or order of a competent court, if such court has recorded a finding at the time of the passing of such decree or order that the land was required *bona fide* by the landlord for any of the purposes specified in sub-section (*1*)." ; and

(*6*) for *Explanation I* the following shall be substituted, namely :—

" *Explanation I.*—In cases falling under clause (*a*) of sub-section (*1*) of section 4 any notice given before the commencement of this Act, and in cases falling under clause (*b*) thereof any notice given before the commencement of the Bombay Tenancy (Amendment) Act, 1946, for the termination of the tenancy of a protected tenant, shall not be deemed to be a valid notice for the purposes of sub-section (*1*).". Bom. of 1946.

Amendment of section 8 of Bom. XXIX of 1939.

10. In section 8 of the said Act, in sub-section (*1*) for the words " on eviction " the words " before eviction " shall be substituted.

Substitution of new section 9 for section 9 of Bom. XXIX of 1939.

11. For section 9 of the said Act, the following section shall be substituted, namely :—

Continuation of tenancy on the death of a protected tenant.

" 9. (*1*) If a protected tenant dies, the landlord shall continue the tenancy on the same terms and conditions on which such protected tenant was holding it at the time of his death to the heir or heirs of the deceased tenant, such heir or heirs being determined by the Collector in the manner provided by or under the Bombay Land Revenue Code, 1879. Bom. V of 1879.

(*2*) Where any land is held jointly by two or more protected tenants the tenancy of such land shall, on the death of any such protected tenant, be continued, subject to the provisions of this Act, jointly to his heirs, determined in the manner provided in sub-section (*1*), and the surviving protected tenant or tenants.".

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12. For section 10 of the said Act, the following section shall be substituted, namely :— Substitution of new section 10 for section 10 of Bom. XXIX of 1939.

" 10. No sub-division or alienation of a land held by a protected tenant shall be recognised except when it is made with the permission of the Provincial Government or any officer authorised by the Provincial Government in this behalf. The Provincial Government may from time to time prescribe the conditions subject to which such permission shall be granted." Sub-division or alienation not to be recognised unless made with the permission of Government.

13. In section 12 of the said Act in sub-section (*9*) for the word " Act " the word " section " shall be substituted. Amendment of section 12 of Bom. XXIX of 1939.

14. For sub-sections (*1*) and (*2*) of section 13 of the said Act, the following sub-sections shall be substituted, namely :— Amendment of section 13 of Bom. XXIX of 1939.

" (1) An application— Application for declaration, direction and compensation.

(*a*) for a declaration under section 2A that the person cultivating any land is not a tenant;

(*b*) for a declaration under section 3A that a tenant is not a protected tenant;

(*c*) for a declaration that any of the contingencies specified in any of the clauses (*a*) to (*e*) of sub-section (*2*) of section 5 has occurred;

(*d*) for a declaration that the landlord *bona fide* requires the land for any of the purposes specified in sub-section (*1*) of section 7;

(*e*) for a direction for obtaining possession of land under sub-section (*5*) of section 7;

(*f*) for award of compensation under sub-section (*5*) of section 7;

(*g*) for determining under section 8 compensation for improvements made to a land—

shall be made to the Mamlatdar in whose jurisdiction the land is situated. Such application shall be made in such form as may be prescribed.

(*2*) On receipt of such application, the Mamlatdar shall hold an enquiry and shall either make or refuse to make the declaration as specified in clause (*a*), (*b*), (*c*) or (*d*), as the case may be, make the direction as specified in clause (*e*), award compensation, if any, payable to the tenant as specified in clause (*f*) or determine the compensation payable to the tenant as specified in clause (*g*), as the case may be, after following as far as is practicable the procedure prescribed in section 12."

Amendment of section 14 of Bom. XXIX of 1939.

15. In sub-sections (*1*) and (*2*) of section 14 of the said Act, after the word " rate, " the words " vero, huk," shall be inserted.

Insertion of new section 14A in Bom. XXIX of 1939.

16. After section 14 of the said Act, the following new section shall be inserted, namely :—

Determination of reasonable rent.

" 14A. (*1*) The rent payable by a tenant other than a protected tenant shall be the rent agreed upon between such tenant and his landlord. Where there is a dispute as regards the reasonableness of the rent payable according to such agreement the rent payable shall be the reasonable rent determined under sub-section (*2*).

(*2*) For the determination of reasonable rent under sub-section (*1*) either the tenant or the landlord may apply in writing to the Mamlatdar within whose jurisdiction the land is situated. Such application shall be in such form as may be prescribed. Thereupon the provisions contained in sub-sections (*2*) to (*11*) of section 12 shall, so far as may be, apply ".

Amendment of section 15 of Bom. XXIX of 1939.

17. To sub-section (*1*) of section 15 of the said Act, the following proviso shall be added, namely :—

" Provided that the maximum rate of rent shall not exceed in the case of irrigated lands one-fourth of the crop-share and in the case of other lands one-third of the crop-share ".

Insertion of new section 15A in Bom. XXIX of 1939.

18. After section 15 of the said Act, the following new section shall be inserted, namely :—

Commutation of crop-share rent and rent in kind into cash.

" 15A. (*1*) The Provincial Government may from time to time, by notification in the *Official Gazette* declare that rents payable wholly or partly as a crop-share and rents in kind levied in any area to which the notification applies shall, with effect from a date specified in the notification, which shall not be earlier than 6 months from the date of the notification, be commuted into cash in the manner prescribed.

(*2*) Notwithstanding anything contained in any agreement, usage, decree or order of a Court or any orders of the Provincial Government under section 15, no landlord in any area in respect of which a notification has been issued under sub-section (*1*) shall recover any rent in kind or by way of crop-share or in excess of the commuted cash rent after the date specified in such notification under sub-section (*1*).

(*3*) If any landlord recovers any rent in kind or by way of crop-share or in excess of the commuted cash rent, he shall, on conviction, be punishable with fine which may extend to Rs. 1,000.

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(*4*) Every notification under sub-section (*1*) shall be placed before each Chamber of the Provincial Legislature and shall be liable to be rescinded or modified by a resolution passed during the next following session by both Chambers."

Amendment of section 17 of Bom. XXIX of 1939.

19. In sub-section (*1*) of section 17 of the said Act, for the words "in any alienated village or village held on khoti or talukdari tenure," the words "in any village" shall be substituted.

Amendment of section 19 of Bom. XXIX of 1939.

20. In sub-section (*1*) of section 19 of the said Act, the first proviso and the word "further" in the second proviso shall be deleted.

Amendment of section 20 of Bom. XXIX of 1939.

21. Section 20 of the said Act shall be renumbered as sub-section (*1*) of the said section and to the said section the following new sub-section shall be added, namely :—

"(*2*) No order for ejectment shall be passed in any such suit or proceeding unless the Court has called upon the tenant to tender to the landlord the rent in arrears together with the cost of the suit or proceeding or to give such security as it thinks fit for making such payment within fifteen days and the tenant has failed to comply with such direction within fifteen days."

Substitution of new section 23 for section 23 of Bom. XXIX of 1939.

22. For section 23 of the said Act, the following shall be substituted, namely :—

No lease to be granted for less than 10 years and every lease to be deemed to be for 10 years.

"23. (*1*) (*a*) No lease of any land situated in any area in which this section comes into force made after the date of the coming into force of this section in such area, shall be for a period of less than 10 years ; and

(*b*) every lease subsisting on the said date in respect of any land in such area shall be deemed to be for a period of not less than 10 years.

(*2*) Notwithstanding any agreement, usage or law to the contrary, no such lease as is specified in clause (*b*) of sub-section (*1*) shall be terminated before the expiry of a period of 10 years only on the ground that the period of the lease has expired.

(*3*) Any landlord who contravenes the provisions of sub-section (*1*) or (*2*) shall, on conviction, be punishable with fine, which may extend to Rs. 1,000."

Amendment of section 24 of Bom. XXIX of 1939.

23. In sub-section (*1*) of section 24 of the said Act for the word "person" the word "tenant" shall be substituted.

Amendment of section 27 of Bom. XXIX of 1939.

24. In sub-section (*2*) of section 27 of the said Act—

(*1*) after clause (*a*) the following new clauses shall be inserted, namely :—

" (*aa*) the form of application for a declaration under sub-section (*1*) of section 2A ;

(*ab*) the form of application for a declaration under sub-section (*1*) of section 3A that the tenant is not a protected tenant ;

(*ac*) the conditions for grant of permission under section 10 for sub-division or alienation of land ; "

(*2*) for clause (*d*) the following shall be substituted, namely :—

" (*d*) the form of application for declarations under clauses (*a*), (*b*), (*c*) and (*d*), for a direction under clause (*e*) and for award or determination of compensation under clauses (*f*) and (*g*) of sub-section (*1*) of section 13 ; " ; and

(*3*) after clause (*d*) the following clauses shall be inserted, namely :—

" (*dd*) the form of application for determining reasonable rent under sub-section (*2*) of section 14A ;

(*de*) the manner of commutation of crop-share rent and rent in kind into cash under sub-section (*1*) of section 15A ; ".

Insertion of new section 28A in Bom. XXIX of 1939.

25. After section 28 of the said Act, the following new section shall be inserted, namely :

Delegation of powers.

"28A. The Provincial Government may, subject to such restrictions and conditions as it may impose, by notification in the *Official Gazette* delegate to any of its officers all or any of the powers conferred on it by this Act."

STATEMENT OF OBJECTS AND REASONS.

The Bombay Tenancy Act, 1939, was passed by the Legislature and, after having received the assent of the Governor General, was first published and became law on 2nd April 1940. Under the scheme of the Act, as it was passed by the Legislature, the Act was to come into force on such date as the Provincial Government may appoint by notification in the Official Gazette as laid down in sub-section (3) of section 1. As a result of the suspension of constitutional Government, this important measure of agrarian legislation was not applied to the whole Province as it had been intended and powers were taken by the Governor's Act VII of 1941 to permit the gradual and piecemeal application of the Act to selected areas. The Act was accordingly applied from 1st April 1941 to the districts of Surat, Thana, West Khandesh and Dharwar and all Partially Excluded Areas in the Province. It is necessary to repeal and re-enact sections 2 to 7 of the Bombay Tenancy (Amendment) Act, 1941, to validate the gradual and piecemeal application of the Act.

2. Though the Act has now been applied to the whole Province with effect from 1st April 1946, the gradual and piecemeal application of the Act makes it necessary to make certain changes in the relevant dates given under the various sections of the Act, e.g., sections 3 and 4.

3. The experience of the working of the Act in the limited areas to which it has been applied since 1st April 1941, has shown that the rights conferred on the tenants and the liabilities imposed on the landlords have not been effectively enforced, as the tenant is too ignorant and illiterate and too much under the control of the landlord or the sowkar to assert his rights against the landlord or to enforce the liabilities imposed on the landlord under the Act. It is therefore necessary, if the rights conferred on tenants are to be effectively asserted and the liabilities imposed on the landlord effectively enforced, to modify the relevant provisions of the Act, to shift on the landlord the onus of proving that the tenant is not entitled to certain rights conferred on him by the Act and to prescribe penalties for the failure of the landlord to discharge the liabilities imposed on him by the Act.

The present Bill is intended to secure the above objects.

11th July 1946. MORARJI DESAI.

Government of Bombay

LEGAL DEPARTMENT

[L. A. BILL No. VII OF 1946]

(As published in the "Bombay Government Gazette" of 12th July 1946.)

A Bill to re-enact the Bombay Tenancy (Amendment) Act, 1941, and to amend the Bombay Tenancy Act, 1939.

[Mr. MORARJI R. DESAI, M.L.A.]

BOMBAY: PRINTED AT THE GOVERNMENT CENTRAL PRESS.

L. A. BILL No. VII OF 1946.

A Bill to re-enact the Bombay Tenancy (Amendment) Act, 1941, and to amend the Bombay Tenancy Act, 1939.

REPORT OF THE SELECT COMMITTEE.

We, the members* of the Select Committee appointed to consider L. A. Bill No. VII of 1946 [A Bill to re-enact the Bombay Tenancy (Amendment) Act, 1941, and to amend the Bombay Tenancy Act, 1939], have the honour to report as follows :—

We have carefully considered the Bill and have made certain changes therein. The reasons for the principal changes are given below against the clauses in which they occur :—

Clause 3.—The amending Bill proposes that cutting of grass or wood should be included in agriculture. We consider that cutting of grass only should be included in agriculture. We have accordingly suggested that the words " grass or " should be deleted from clause (1) of section 2 of the Bombay Tenancy Act, 1939.

Clause 4.—The word " cultivate " has not been defined in the Tenancy Act, 1939. We consider it desirable that the word should be defined. We suggest that after clause 10 of section 2 of the Act, a new clause should be added saying that " to cultivate " shall mean " to carry on agricultural operations ".

Proposed section 2A (*1*) is intended to remove difficulties about deciding who is a tenant and who is not a tenant. There are persons who take a nokarnama

* *Note* —The signatures of Mr. J. H. Shamsuddin, Mr. Raziuddin H. Goodwala, Mr. R. A. Kulkarni and Mr. H. V. Pataskar will be notified when received

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in which it is mentioned that they will be given a certain amount of crop-share as wages from the produce. Such persons will be tenants. In order to distinguish such persons from servants, we have suggested that the words " on wages payable in cash or kind but not in crop-share " may be added after the word " servant " in clause (*b*) of sub-section (*1*) of proposed section 2A. Consequential amendment may be made in sub-clause (*iii*) of clause 11 of section 2.

We consider that the period of six months within which an owner is required to apply to the Mamlatdar for a declaration that a person is not a tenant is too short. We have, therefore, suggested that the period should be one year.

Clause 6.—We extend the time of six months to one year in order to bring the provision in line with that of proposed section 2A.

Clause 7.—We extend the period of four months provided for the payment of rent to six months, as we consider the period of four months rather short.

Clause 8.—We do not consider that sub-sections (*1*) and (*2*) of section 5 of the original Act require to be amended in the manner proposed by sub-clauses (*a*) and (*b*) of this clause. In our opinion they may remain as they are and sub-clauses (*a*) and (*b*) of this clause may be deleted.

Clause 9.—We suggest that sub-clause (1) of this clause be deleted, as it is unnecessary. We have suggested a suitable amendment to section 24 of the original Act to achieve the desired object.

We suggest that after the words " by him " in line 4 of sub-section (*2A*) the words " under sub-section (*1*) " should be added. The object is that a tenant whose tenancy has been terminated for non-payment of rent should have no right to the tenancy again.

We have deleted sub-section (*2B*), as we consider it redundant in view of the provisions in sub-section (*2A*). The reference to sub-section (*2B*) wherever it occurs should be deleted.

We suggest that the penalty clause (sub-clause 6) should be deleted from the amending Bill, as in our opinion the proposed sub-section (*5*) of section 7 of the Tenancy Act amply safeguards the interests of the tenants and consequently there is no need to impose further penalty on the landlords. We consider the penalty clause as too drastic and also unnecessary, in view of the several safeguards provided for in the Bill in favour of the tenants. The proviso should, however, stand.

Clause 11.—We think we had better leave the original section 9 of the Act as it is without any amendment. The original section says that one of the heirs should give notice to the landlord within four months after the death of the tenant. We recommend that this period should be increased to six months. We accordingly suggest that this clause may be omitted and only the period of four months should be raised to six months.

Clause 12.—We have omitted the words " or alienation " from the proposed section 10 as " lease or alienation " has been provided for in section 11 of the Act.

Clause 14.—There are certain sections in the Act which apply to protected tenants and we consider that these must be made applicable to ordinary tenants also. We have, therefore, suggested that sections 5, 6, 10 and 11 of the Act should apply to ordinary tenants as well. A new clause 14A has accordingly been added in the Bill.

Clause 17.—We suggest that for the words " one-fourth of the crop-share " the words " one-fourth of the crop or its value " and for the words " one-third of the

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crop-share " the words " one-third of the crop or its value " be substituted. The manner of determining the value of the crop may be left to the rules. This will make the proviso quite plain.

Clause 18.—We have suggested that from the proposed section 15A the following words may be deleted :—

(*i*) " and rents in kind levied " from sub-section (*1*),

(*ii*) " in kind or " from sub-section (*2*),

(*iii*) " in kind or " from sub-section (*3*).

We do not think that rent in kind should be commuted into cash.

Clause 21.—We think that there must be a limit to the period of default on the part of a tenant in payment of rent. We do not want to encourage contumacious tenants. We have, therefore, provided that if a tenant makes a default for three successive years, he should not be entitled to the benefit provided in sub-section (*2*) and the landlord should have the option to evict him.

Clause 22.—We have added a proviso after sub-section (*2*) of proposed section 23, with a view to enabling a tenant to terminate the lease earlier than ten years if he so desires.

Clause 23.—Sub-clause (1) of clause 9 of the amending Bill provided that a landlord must obtain a declaration from the Mamlatdar in case of removal of a tenant. We have, however, omitted that sub-clause. We have suggested instead the insertion of a new sub-section after sub-section (*1*) of section 24 of the Act according to which the landlord must obtain the order of the Mamlatdar for obtaining possession of land.

Clause 25.—We have suggested that the Provincial Government should not delegate its powers to officers below the rank of an Assistant or Deputy Collector. This provision is intended to ensure proper and judicious use of the powers delegated.

(Signed) MORARJI DESAI.

(,,) D. N. DESAI.

(,,) Y. B. CHAVAN.

(,,) JAITU NAMAJI PATIL.

(,,) MAGANLAL R. PATEL.

(,,) V. V. PATIL.

(,,) D. K. GOSAVI.

(,,) L. M. SHRIKANT.

(,,) MANSINHJI BHASAHEB
(Subject to a minute of dissent.)

(,,) M. N. NATU.
(Subject to a minute of dissent.)

[*Joint minute of Dissent by Sardar Mansinhji Bhasaheb (Thakore of Kerwada), M.L.A., and Dr. M. N. Natu, M.L.A.*]

We have carefully read the L. A. Bill No. 7 of 1946 and the changes proposed in it in the Select Committee, with a view to find out the usefulness of the proposed measure in the interest of the land and those concerned with it namely—the tenant, the landlord and the State. As has already been expressed, such measures have to be taken with caution and care, so that they may not cause any breach in the relations of the tenants and the landlords. While examining the bill, as it is emerging out of the Select Committee from this point of view, we are glad that we have been able to clarify good many debatable points with a common understanding and we are thankful to the Hon. Ministers and the Hon. Members on the Committee for the same. There are certain points, however, on which we have to express a note of dissent.

(1) By the new clauses 4 (2A) and 6 (3A) the onus of proof that a person is a tenant or a protected tenant is shifted to the landlord. The landlord has to prove that a person though he happens to be on his land, may be as a daily labourer, Hari, Potter, Barbers, Vartanias, and the rest is not his tenant. Secondly the landlord has to prove that a tenant is not a protected tenant as he has not completed his period of 6 years or failed to pay his rent or surrendered his land during that qualifying period, etc., etc. This shifting of the onus of proof is against all principles of Law, Justice and Equity. The onus of proof must lie on the one who asserts a right, i.e., in this case the tenant and not the landlord.

(2) By clause 4 (2A) every person who is on the land shall be presumed to be a tenant. This appears to cover Pasayta (Chakariat-Service) land which is given to the village servants like Vartania, Potters, Barbers, etc., etc., for giving service to the landlord and the village. This clause seeks to make them tenants and by the Tenancy Act of 1939, these tenants will not be liable to render any personal service. It will be an offence under the act to take any service from the tenant. So the landlord will lose the lands and lose the service which is extremely hard on the landlord. These people are given land in lieu of service and not as tenants. Even the Government has got Vartanias in the villages who are given Pasayta land for rendering service whilst landlords' lands are sought to be given away without service.

(3) In clause 9, sub-clause (2A), the right of the landlord to lease out his land to any person he likes is restricted. If he wishes to lease out 'any' land, he has to give it to a protected tenant irrespective of the fact that he may be a protected tenant of a small area and the land to be leased out may be of a large area or of a different nature, e.g., Bagayat Land.

(4) Amendment No. 17, is sought to fix up the maximum rent. It is just a few months that the Tenancy Act has been made applicable to the whole of the Province. Sufficient experience in the working of the Act has yet to be gained. There are various modes and methods of taking the rent in different parts of the Province. The physical features and the character of the land differs very widely in the Province. The producing capacity and the fitness of the land, the amount of labour, repairs, expenditure on upkeep and such other things about methods of agriculture vary a great deal from place to place. The relations of the tenants and the land-owners are also of various types. Some of them are working together peacefully for more than a generation. Moreover Section 15 of the Act as at present gives sufficient powers to the Government to fix maximum rent by a notification. This section has not been given a fair trial. If it were that the section was given

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a trial and found to be ineffective in its result, a proviso of the type in the amendment was justifiable. Again under Section 12 of the Act, both the tenant and the landlord, have a right to get a reasonable rent fixed and to get it changed if the condition of the land changes. Very little, if any, experience about the working of this section of determining the rent is gained so far. Under the circumstances, therefore, it is far too drastic a change to bring all tenants from all parts of the Province under one category and rule of maximum rent. In the absence of any experience gained to the contrary, the amendment is really a change of a wide nature. If it is desired that evolution is a better way of obtaining good results, let the sections quoted above be given a fair trial. The Government has always the power to amend things when found necessary by a suitable further legislation. The amendment if allowed to be a part of the Act will, we feel, not only give rise to an unnecessary ill-feeling amongst the tenants and the landlords (especially of the middle class), but those land-owners who used to take any interest in the land so as to keep it in a fit condition by spending on manures, seeds, repairs, bunds, wells and their upkeep, etc., are not likely to continue to do the same and the ultimate result will be that the land will suffer and deteriorate as a tenant in many of the cases will not ordinarily be in a position to spend for the same. Ultimately, therefore, this will result in a great national loss. Again the determination of the possible maximum crop yield of a particular land is a long and labourous task and may require a method and process of assessment and a good amount of time will also be necessary to get this data. The Government may well start with this work in the interest of the land itself and if it is found that the share of the landlord is exhorbitant, the proviso as proposed in the amendment may be added to this Act by further legislation. This will be a correct procedure and not one of assumption without facts. In passing, it may be mentioned that the amendment will restrict the rent obtained by the landlord and will considerably reduce his income, while the landlord will have to pay the same dues to the Government and the Local Fund Cess as before. This will be a hardship and hence proportionate reductions shall have to be made by the Government in the Government dues and the Local Fund Cess. The clause does not also provide for a tenant not doing anything on the land and leaving it fallow and uncultivated just out of spite, so that no crop-share becomes payable by him. In all crop-share system a clause is always provided that if the tenant fails to cultivate the land in the proper manner or leave it fallow, he must pay a reasonable rent in lieu of crop-share. This is an important condition and must be added as it is always included in the crop-share rent-notes. Taking into consideration all these factors, we suggest that the Amendment No. 17 is premature and unnecessary and that it should be deleted.

(5) It is a right of every citizen in all civilised nations to move a Civil Court and get a judicious decision on matters relating to his right, title and interest in all properties, movable and immovable. According to this bill, this right is forbidden to the landlord and he cannot go to a Civil Court in matters of dispute. His only recourse is to a Mamlatdar 'who is an Executive Officer of the Government not possessing judicial training of a high order.' Under the Act, the only time when a landlord can go to a Civil Court is in fixing a reasonable rent under Section 12 of the Act. In all other matters which are of equal importance, e.g., eviction, compensation for improvement to land, predecessors-in-title on a site, procedure for taking possession of the land, etc., etc., which are technical law points, the Civil Court and not the Mamlatdar can equitably and justly give the necessary decisions. It is desired that justice and execution should be separated. Mamlatdars and Collectors are to a great extent officers for execution. They should not, therefore, be officers of justice where an independent Civil Court can determine the facts in fairness to all concerned and hence we suggest that a remedy in Civil Court

should be open under the Act. Nobody should feel unhappy of going to a court of justice if it is felt that it is necessary in fair play and better interests.

(6) There are two types of tenants, the protected and the ordinary. The tenancy of a protected tenant can be terminated under Section 7 of the Act for certain purposes. The tenancy of the ordinary tenant cannot be terminated as it is argued that he is a tenant under a lease of 10 years. But under Amendment No. 22 every lease subsisting on the land can be deemed to be a lease for a period of ten years. Thus even if the land-owner had desired before making the lease to take the land for any reasons mentioned under Section 7, he is now debarred. The tenant, however, has a choice of surrendering the lease under Amendment 22. It is, therefore, just that if any landlord wants the land for the purposes mentioned under Section 7 he should have a right to do so. We, therefore, suggest that Section 7 should be included in amendment clause No. 14-A along with the other sections. The ordinary tenant will be able to get back his land if the owner ceases to use it for the purpose as provided for in Section 7. Both the landlord and tenant will thus have the same rights.

(7) Amendment 20 takes away the necessity of asking permission from the landlord by an ordinary tenant for planting of trees. This proviso was, we think, inserted with a special purpose in the existing Act. It was that a tenant under a lease should not encumber a land in such a manner that the effects will last beyond the period of his lease. It is an ordinary principle of law that no incumbrances of a far-reaching character should be allowed to be effected by a person who is in a temporary occupation of anything. Planting of trees has a far-reaching character and the landlord has to pay compensation for the trees when the land comes to him after the lease. It is, therefore, just and necessary that if a compensation is claimed the permission should be obtained. Moreover, under the existing Act, the landlord has no right to the produce and wood of such trees. This was already a grievance and the amendment has aggravated it. Is it not just that a landlord should receive some part of what is planted and grown on his land? We, therefore, suggest that the amendment be deleted and the landlord be given a share in the produce and wood of trees planted in his land.

(8) There are two other minor points, the first is that in amendment clause 12, the wording is still ambiguous. It will be clearer if the following words are substituted for the words before " shall " in the beginning of the clause :—

" No sub-division by a protected tenant of the land held by him "……

Another point is about the delegation of powers, under Amendment 25. If the powers are to be delegated, they should be delegated to such an officer who has a larger jurisdiction so that there will be a uniformity in their use in one division at least. Assistant or Deputy Collector is an officer for a part of the District. And it is likely that there may be variation in the use of powers. We, therefore, suggest that officers not below the rank of a commissioner be delegated such powers.

(9) The penalty clauses in the Bill have caused an amount of ill-feeling amongst the land-owners. When sufficient guarantee is otherwise provided for to see that the landlords do not commit any action likely to do any harm to the interests of the tenant it is not fair to keep the penalty clauses. We, therefore, suggest that these clauses should be deleted.

We have put in this minute of dissent with a hope that it may help the purpose of such a Bill which we feel is to increase the good relations between the tenants, landlords and the State in the interest of the land. We humbly request that it may be taken in that light.

(Signed) MANSINHJI BHASAHEB.
(„) M. N. NATU.

19th August 1946.

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Note.—**Deletions made by the Select Committee are shown in square brackets and additions are shown in italics.**

L. A. BILL No. VII OF 1946.

A Bill to re-enact the Bombay Tenancy (Amendment) Act, 1941, and to amend the Bombay Tenancy Act, 1939.

(As amended by the Select Committee.)

26 Geo. 5, Ch. 2.

Bom. VII of 1941.

WHEREAS in view of the provisions of sub-section (*4*) of section 93 of the Government of India Act, 1935, it is expedient to re-enact the Bombay Tenancy (Amendment) Act, 1941;

Bom. XXIX of 1939.

AND WHEREAS it is expedient to amend the Bombay Tenancy Act, 1939, for the purposes hereinafter appearing; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Bombay Tenancy (Amendment) Act, 1946.

(*2*) It extends to the whole of the Province of Bombay except the City of Bombay.

(*3*) It shall come into force on such date as the Provincial Government may by notification in the Official Gazette appoint in this behalf.

Repeal and re-enactment of sections 2 to 7 of Bom. VII of 1941.

Bom. VII of 1941.

2. Sections 2 to 7 of the Bombay Tenancy (Amendment) Act, 1941, are repealed and re-enacted.

Amendment of section 2 of Bom. XXIX of 1939.

.XXIX 39.

3. [In section 2 of the Bombay Tenancy Act, 1939 (hereinafter called "the said Act"), in clause (1) the words "but does not include cutting of grass or wood only" shall be deleted.] *In section 2 of the Bombay Tenancy Act, 1939 (hereinafter called "the said Act"),—*

(a) in clause (1), the words "grass or" shall be deleted;

(b) after clause (10), the following new clause shall be inserted, namely:—

"(10A) 'To cultivate' means to carry on any agricultural operation.";

(c) in sub-clause (iii) of clause (11) for the words "by servants or" the words "by servants on wages payable in cash or kind but not in crop share or by" shall be substituted.

Insertion of new Chapter IA in Bom. XXIX of 1939.

4. After section 2 of the said Act, the following new Chapter shall be inserted, namely :—

"CHAPTER IA.

TENANTS.

Tenants.

2A. (*1*) A person cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not—

(*a*) a member of the owner's family, or

(*b*) [a servant] *a servant on wages payable in cash or kind but not in crop share* or *a* hired labourer cultivating the land under the personal supervision of the owner or any member of the owner's family,

unless the owner has within [six months] *one year* of the coming into force of the Bombay Tenancy (Amendment) Act, 1946, made an application to the Mamlatdar within whose jurisdiction the land is situated for a declaration that the person is not a tenant. Bom. of 1946

(*2*) Where an application under sub-section (*1*) has been made and the Mamlatdar refuses to make such declaration and the Mamlatdar's decision is not set aside by the Collector in appeal under sub-section (*3*) of section 13 or by the Provincial Government under section 28, the person shall be deemed to be a tenant for the purposes of this Act."

Amendment of section 3 of Bom. XXIX of 1939.

5. In section 3 of the said Act—

(*1*) for clause (*i*) the following shall be substituted, namely :—

"(*a*) he has held such land continuously for a period of not less than six years immediately preceding either—

(*i*) the first day of January 1938, or

(*ii*) the first day of January 1945 ; and " ;

(*2*) clause (*ii*) shall be lettered as clause (*b*) ;

(*3*) in Explanations I and II after the words and figures " the first day of January 1938 " the words and figures " or the first day of January 1945, as the case may be," shall be inserted.

Insertion of new section 3A in Bom. XXIX of 1939.

6. After section 3 of the said Act, the following new section shall be inserted, namely :—

Tenants on expiry of [six months] *one year* from coming into force of Bom. of 1946 to be deemed protected tenants.

"3A. (*1*) Every tenant shall, on the expiry of [six months] *one year* from the date of the coming into force of the Bombay Tenancy (Amendment) Act, 1946, be deemed to be a protected tenant for the purposes of this Act and his rights as such protected tenant shall be recorded in the Record of Rights, unless his landlord has within the said period made an application to the Mamlatdar within whose jurisdiction the land is situated for a declaration that the tenant is not a protected tenant. Bom. of 1946.

(2) Where an application under sub-section (1) has been made and the Mamlatdar refuses to make such declaration and the Mamlatdar's decision is not set aside by the Collector in appeal under sub-section (3) of section 13 or by the Provincial Government under section 28, the tenant shall be deemed to be a protected tenant for the purposes of this Act and his rights as such protected tenant shall be recorded in the Record of Rights."

Amendment of section 4 of Bom. XXIX of 1939.

7. In section 4 of the said Act—

(a) in sub-section (1)—

(1) for the first paragraph the following shall be substituted, namely :—

"Every tenant shall be deemed to be a protected tenant for the purposes of this Act, if he—

(a) held any land and cultivated it personally continuously for a period of not less than six years immediately preceding the first day of April 1937 and was evicted from such land on or after such date, or

(b) held any land and cultivated it personally continuously for a period of not less than six years immediately preceding the first day of April 1944 and was evicted from such land on or after such date :"

(2) in the proviso after the words "such rent" the words, brackets and letter "in cases falling under clause (a)" shall be inserted and after the words "is situated" the words, brackets, letter and figures "and in cases falling under clause (b) within [4] [6] months from the date on which the Bombay Tenancy (Amendment) Act, 1946, comes into force" shall be added ;

Bom. of 1946.

(b) in sub-section (2)—

(1) after the words "to the landlord" the words, brackets, letter and figure "in cases falling under clause (a) of sub-section (1)" and after the words "is situated" where they occur for the first time the words, brackets, letter and figures "and in cases falling under clause (b) of sub-section (1) within one year after the coming into force of the Bombay Tenancy (Amendment) Act, 1946" shall be inserted ; and

Bom. of 1946.

(2) for clauses (a) and (b) the following shall be substituted, namely :—

"(a) in cases falling under clause (a) of sub-section (1)—

(i) if the land has been leased out by the landlord for a period expiring after the 31st day of May immediately following the date of the coming into force of this section in the area in which the land is situated, from the date on which such lease expires ; and

(*ii*) in other cases, from the 1st day of June immediately following the date of the coming into force of this section in the area in which the land is situated ;

(*b*) in cases falling under clause (*b*) of sub-section (*1*)—

(*i*) if the land has been leased out by the landlord for a period expiring after the 31st day of May immediately following the date of the coming into force of the Bombay Tenancy (Amendment) Act, 1946, from the date on which such lease expires ; and

Bom. of 1946.

(*ii*) in other cases from the 1st day of June immediately following the date of the coming into force of the Bombay Tenancy (Amendment) Act, 1946."

Bom. of 1946.

Amendment of section 5 of Bom. XXIX of 1939.

8. In *sub-section* (*2*) *of* section 5 of the said Act—

[(*a*) in sub-section (*1*) the words " or in the absence of any such agreement the rent payable according to the usage of the locality or if there is no such agreement or usage, or " shall be deleted and for the words " or usage," the words " the rent payable shall be " shall be substituted ;

(*b*) in sub-section (*2*)—

(*1*) for the words " such tenant " where they occur for the second time the words and figures " the landlord has on application under section 13 obtained a declaration from the Mamlatdar that such tenant " shall be substituted ;]

[(*2*)] (*1*) for the word " fails " wherever it occurs the words " has failed " shall be substituted ;

[(*3*)] (*2*) in clause (*a*) after the words " if any," the words, brackets, figures and letter " in cases falling under sub-clause (*i*) of clause (*a*) of section 3 " shall be inserted and the following shall be added at the end, namely :—

" and in cases falling under sub-clause (*ii*) of the said clause for the year ending on 31st day of March of the year immediately preceding the year in which the Bombay Tenancy (Amendment) Act, 1946, comes into force, within [four] *six* months from the date of the coming into force of the said Act ;"

[(*4*)] (*3*) in clause (*b*) after the words " any year " the words, brackets and letter " subsequent to the year referred to in clause (*a*) applicable to his case " shall be inserted.

Bom. of 194

Amendment of section 7 of Bom. XXIX of 1939.

9. [In section 7 of the said Act—

(*1*) in sub-section (*1*) after the words " if the landlord " the following shall be inserted, namely :—

" has obtained a declaration from the Mamlatdar within whose jurisdiction the land is situated that he "

(2) in sub-section (2) for the portion beginning with the words "the tenant" where they occur for the first time and ending with the words "the receipt thereof" the following shall be substituted, namely :—

"the landlord shall forthwith restore possession of the land to the tenant whose tenancy was terminated by him, unless he has obtained from the tenant his refusal in writing to accept the tenancy on the same terms and conditions or has offered in writing to give possession of the land to the tenant on the same terms and conditions and the tenant has failed to accept the offer within three months of the receipt thereof." ;

(3) after sub-section (2) the following new sub-sections shall be inserted, namely :—

"(2A) Where a landlord intends to lease out any land, he shall first offer in writing the tenancy of such land to the protected tenants whose tenancies have been terminated by him and forthwith give possession of the land to any one of them who may be willing to accept the tenancy whether at an agreed rent or subject to the determination of the rent under section 12. If the landlord and the tenant do not come to an agreement as to the rent payable for the land, on an application made by either party the Mamlatdar shall determine under section 12 the reasonable rent payable by the tenant.

(2B) If a tenant refuses in writing to accept the tenancy terminated under sub-section (1) or fails to accept the offer made under sub-section (2), the landlord shall offer in writing to the other protected tenants whose tenancies have been terminated by him, possession of the land on the same terms and conditions and forthwith give possession of the land to any one of them who may be willing to accept the offer."

(4) in sub-section (4) for the words, brackets and figure "After the tenant has recovered possession under sub-section (2)" the following shall be substituted, namely :—

"After a tenant has been put in possession under sub-section (2) or (2B)" ;

(5) for sub-section (5) the following sub-sections shall be substituted, namely :—

"(5) If at any time the tenant makes an application under section 13 to the Mamlatdar and satisfies him that the landlord has failed to comply within a reasonable time with the provisions of sub-section (2), (2A) or (2B), as the case may be, the tenant shall be entitled on a direction by the Mamlatdar to obtain immediate possession of the land and to such compensation as may be awarded by the Mamlatdar for any loss caused

to the tenant by eviction and by failure on the part of the landlord to restore or give possession of the land to him as required by sub-section (*2*), (*2A*) or (*2B*), as the case may be.

(*6*) Every landlord who fails to comply with the provisions of sub-section (*2*), (*2A*) or (*2B*) shall, on conviction, be punishable with fine which may extend to Rs. 1,000 :

Provided that no compensation shall be awarded under sub-section (*5*) to a tenant whose tenancy was terminated under a decree or order of a competent court, if such court has recorded a finding at the time of the passing of such decree or order that the land was required *bona fide* by the landlord for any of the purposes specified in sub-section (*1*)." ; and

(*6*) for *Explanation I* the following shall be substituted, namely :—

"*Explanation I.*—In cases falling under clause (*a*) of sub-section (*1*) of section 4 any notice given before the commencement of this Act, and in cases falling under clause (*b*) thereof any notice given before the commencement of the Bombay Tenancy (Amendment) Act, 1946, for the termination of the tenancy of a protected tenant, shall not be deemed to be a valid notice for the purposes of sub-section (*1*).".] [Bom. of 1946.]

For section 7 of the said Act, the following section shall be substituted, namely :—

The landlord's right to determine protected tenancy.

"*7. (1) Notwithstanding anything contained in section 5, a landlord may terminate the tenancy of a protected tenant by giving him one year's notice in writing stating therein the reasons for such termination if the landlord bona fide requires the land for any of the following purposes, namely :—*

(*a*) *for cultivating personally ; or*

(*b*) *for any non-agricultural purpose.*

(*2*) *If after the landlord takes possession of the land after the termination of the tenancy under sub-section (1), he fails to use it for any of the purposes mentioned in sub-section (1) within one year from the date on which he took possession or ceases to use it at any time for any of the aforesaid purposes within 12 years from the date on which he took such possession, the landlord shall forthwith restore possession of the land to the tenant whose tenancy was terminated by him, unless he has obtained from the tenant his refusal in writing to accept the tenancy on the same terms and conditions or has offered in writing to give possession of the land to the tenant on the same terms and conditions and the tenant has failed to accept the offer within three months of the receipt thereof.*

(*2A*) *Where a landlord intends to lease out any land, he shall first offer in writing the tenancy of such land to the protected tenants whose tenancies have been terminated by*

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him under sub-section (1) and forthwith give possession of the land to any one of them who within three months of the communication of the offer to him expresses his willingness to accept the tenancy whether at an agreed rent or subject to the determination of the rent under section 12. If the landlord and the tenant do not come to an agreement as to the rent payable for the land, on an application made by either party the Mamlatdar shall determine under section 12 the reasonable rent payable by the tenant.

(3) If a landlord after taking possession of the land after the termination of the tenancy under sub-section (1) on the ground that he requires it for the purpose of personal cultivation, dies leaving as his heir, a widow or a minor or a person who is subject to mental or physical disability, such heir shall be deemed to cultivate the land personally, if such land is cultivated by her or his servants or by hired labour.

(4) After the tenant has recovered possession under sub-section (2) he shall, subject to the provisions of this Act, hold such land on the same terms and conditions on which he held it at the time his tenancy was terminated.

(5) If at any time the tenant makes an application under section 13 to the Mamlatdar and satisfies him that the landlord has failed to comply within a reasonable time with the provisions of sub-section (2) or (2A), as the case may be, the tenant shall be entitled on a direction by the Mamlatdar to obtain immediate possession of the land and to such compensation as may be awarded by the Mamlatdar for any loss caused to the tenant by eviction and by failure on the part of the landlord to restore or give possession of the land to him as required by sub-section (2) or (2A), as the case may be:

Provided that no compensation shall be awarded under this sub-section to a tenant whose tenancy was terminated under a decree or order of a competent court, if such court has recorded a finding at the time of the passing of such decree or order that the land was required bona fide by the landlord for any of the purposes specified in sub-section (1).

Explanation I.—In cases falling under clause (a) of sub-section (1) of section 4 any notice given before the commencement of this Act, and in cases falling under clause (b) thereof any notice given before the commencement of the Bombay Tenancy (Amendment) Act, 1946, for the termination of the tenancy of a protected tenant, shall not be deemed to be a valid notice for the purposes of sub-section (1).

Bom. of 1946.

Explanation II.—For the purposes of this section, a tenant shall include his heir as specified in sub-section (3) of section 9.

10. In section 8 of the said Act, in sub-section (1) for the words " on eviction " the words " before eviction " shall be substituted. Amendment of section 8 of Bom. XXIX of 1939.

[Substitution of new section 9 for] *Amendment of* section 9 of Bom. XXIX of 1939.

11. [For] *In* section 9 of the said Act, [the following section shall be substituted, namely :—] *in sub-section (2) for the word "four" the word "six" shall be substituted.*

[Continuation of tenancy on the death of a protected tenant.]

["9. (*1*) If a protected tenant dies, the landlord shall continue the tenancy on the same terms and conditions on which such protected tenant was holding it at the time of his death to the heir or heirs of the deceased tenant, such heir or heirs being determined by the Collector in the manner provided by or under the Bombay Land Revenue Code, 1879. [Bom. V of 1879.]

(*2*) Where any land is held jointly by two or more protected tenants the tenancy of such land shall, on the death of any such protected tenant, be continued, subject to the provisions of this Act, jointly to his heirs, determined in the manner provided in sub-section (*1*), and the surviving protected tenant or tenants.".]

Substitution of new section 10 for section 10 of Bom. XXIX of 1939.

12. For section 10 of the said Act, the following section shall be substituted, namely :—

Sub-division [or alienation] not to be recognised unless made with the permission of Government.

"10. No sub-division [or alienation] of a land held by a protected tenant shall be recognised except when it is made with the permission of the Provincial Government or any officer authorised by the Provincial Government in this behalf. The Provincial Government may from time to time prescribe the conditions subject to which such permission shall be granted."

Amendment of section 12 of Bom. XXIX of 1939.

13. In section 12 of the said Act in sub-section (*9*) for the word "Act" the word "section" shall be substituted.

Amendment of section 13 of Bom. XXIX of 1939.

14. For sub-sections (*1*) and (*2*) of section 13 of the said Act, the following sub-sections shall be substituted, namely :—

Application for declaration, direction and compensation.

"(*1*) An application—

(*a*) for a declaration under section 2A that the person cultivating any land is not a tenant ;

(*b*) for a declaration under section 3A that a tenant is not a protected tenant ;

[(*c*) for a declaration that any of the contingencies specified in any of the clauses (*a*) to (*e*) of sub-section (*2*) of section 5 has occurred ;]

[(*d*) for a declaration that the landlord *bona fide* requires the land for any of the purposes specified in sub-section (*1*) of section 7 ;]

[*e*] (*c*) for a direction for obtaining possession of land under sub-section (*5*) of section 7 ;

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[*f*] (*d*) for award of compensation under sub-section (*5*, of section 7 ;

[*g*] (*e*) for determining under section 8 compensation for improvements made to a land—

shall be made to the Mamlatdar in whose jurisdiction the land is situated. Such application shall be made in such form as may be prescribed.

(*2*) On receipt of such application, the Mamlatdar shall hold an enquiry and shall either make or refuse to make the declaration as specified in clause (*a*) [,] (*b*) *or* [,(*c*) or (*d*)], as the case may be, make the direction as specified in clause [*e*] (*c*), award compensation, if any, payable to the tenant as specified in clause [*f*] (*d*) or determine the compensation payable to the tenant as specified in clause [(*g*)] (*e*), as the case may be, after following as far as is practicable the procedure prescribed in section 12."

14A. In Chapter III of the said Act, the following new section shall be inserted at the beginning, namely :— *Insertion of new section 13A in Bom. XXIX of 1939.*

"13A. The provisions of sections 5, 6, 10 and 11 shall apply to all tenants." *Sections 5, 6, 10 and 11 to apply to all tenants.*

15. In sub-sections (*1*) and (*2*) of section 14 of the said Act, after the word " rate, " the words " vero, huk," shall be inserted. Amendment of section 14 of Bom. XXIX of 1939.

16. After section 14 of the said Act, the following new section shall be inserted, namely :— Insertion of new section 14A in Bom. XXIX of 1939.

" 14A. (*1*) The rent payable by a tenant other than a protected tenant shall be the rent agreed upon between such tenant and his landlord. Where there is a dispute as regards the reasonableness of the rent payable according to such agreement the rent payable shall be the reasonable rent determined under sub-section (*2*). Determination of reasonable rent.

(*2*) For the determination of reasonable rent under sub-section (*1*) either the tenant or the landlord may apply in writing to the Mamlatdar within whose jurisdiction the land is situated. Such application shall be in such form as may be prescribed. Thereupon the provisions contained in sub-sections (*2*) to (*11*) of section 12 shall, so far as may be, apply ".

17. To sub-section (*1*) of section 15 of the said Act, the following proviso shall be added, namely :— Amendment of section 15 of Bom. XXIX of 1939.

" Provided that the maximum rate of rent shall not exceed in the case of irrigated lands one-fourth, [of the

crop-share] and in the case of other lands one-third of the [crop-share ".] *crop or its value determined in the prescribed manner.*"

Insertion of new section 15A in Bom. XXIX of 1939.

18. After section 15 of the said Act, the following new section shall be inserted, namely :—

Commutation of crop-share rent [and rent in kind] into cash.

"15A. (*1*) The Provincial Government may from time to time, by notification in the *Official Gazette* declare that rents payable wholly or partly as a crop-share [and rents in kind levied] in any area to which the notification applies shall, with effect from a date specified in the notification, which shall not be earlier than 6 months from the date of the notification, be commuted into cash in the manner prescribed.

(*2*) Notwithstanding anything contained in any agreement, usage, decree or order of a Court or any orders of the Provincial Government under section 15, no landlord in any area in respect of which a notification has been issued under sub-section (*1*) shall recover any rent [in kind or] by way of crop-share or in excess of the commuted cash rent after the date specified in such notification under sub-section (*1*).

(*3*) If any landlord recovers any rent [in kind or] by way of crop-share or in excess of the commuted cash rent, he shall, on conviction, be punishable with fine which may extend to Rs. 1,000.

(*4*) Every notification under sub-section (*1*) shall be placed before each Chamber of the Provincial Legislature and shall be liable to be rescinded or modified by a resolution passed during the next following session by both Chambers."

Amendment of section 17 of Bom. XXIX of 1939.

19. In sub-section (*1*) of section 17 of the said Act, for the words "in any alienated village or village held on khoti or talukdari tenure," the words "in any village" shall be substituted.

Amendment of section 19 of Bom. XXIX of 1939.

20. In sub-section (*1*) of section 19 of the said Act, the first proviso and the word "further" in the second proviso shall be deleted.

Amendment of section 20 of Bom. XXIX of 1939.

21. Section 20 of the said Act shall be re-numbered as sub-section (*1*) of the said section and to the said section the following new sub-section shall be added, namely :—

"(*2*) No order for ejectment shall be passed in any such suit or proceeding unless the Court has called upon the tenant to tender to the landlord the rent in arrears together with the cost of the suit or proceeding or to give such

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security as it thinks fit for making such payment within fifteen days and the tenant has failed to comply with such direction within fifteen days ["] :

Provided that nothing in this section shall apply to any tenant whose tenancy is terminated for non-payment of rent for three successive years."

Substitution of new section 23 for section 23 of Bom. XXIX of 1939.

22. For section 23 of the said Act, the following shall be substituted, namely :—

No lease to be granted for less than 10 years and every lease to be deemed to be for 10 years.

" 23. (*1*) (*a*) No lease of any land situated in any area in which this section comes into force made after the date of the coming into force of this section in such area, shall be for a period of less than 10 years ; and

(*b*) every lease subsisting on the said date in respect of any land in such area shall be deemed to be for a period of not less than 10 years.

(*2*) Notwithstanding any agreement, usage or law to the contrary, no such lease as is specified in clause (*b*) of sub-section (*1*) shall be terminated before the expiry of a period of 10 years only on the ground that the period of the lease has expired :

Provided that any such lease as is specified in clause (b) of sub-section (1) may be terminated by a tenant before the expiry of a period of 10 years by surrendering the lease.

(*3*) Any landlord who contravenes the provisions of sub-section (*1*) or (*2*) shall, or conviction, be punishable with fine, which may extend to Rs. 1,000."

Amendment of section 17 of Bom. XXIX of 1939.

23. [In sub-section (*1*) of section 24 of the said Act for the word " person " the word " tenant " shall be substituted.]

In section 24 of the said Act—

(*a*) *in sub-section (1), for the word " person " the word " tenant " shall be substituted ;*

(*b*) *after sub-section (1) the following new sub-section shall be inserted, namely :—*

" (1A) No landlord shall obtain possession of any land held by a tenant except under an order of the Mamlatdar. For obtaining such order he shall make an application in the prescribed form " ;

(*c*) *in sub-section (2) for the words " such application " the words, brackets, figures and letter " application under sub-section (1) or (1A) " shall be substituted.*

Amendment of section 27 of Bom. XXIX of 1939.

24. [In sub-section (*2*) of section 27 of the said Act—

(*1*) after clause (*a*) the following new clauses shall be inserted, namely :—

" (*aa*) the form of application for a declaration under sub-section (*1*) of section 2A ;

(*ab*) the form of application for a declaration under sub-section (*1*) of section 3A that the tenant is not a protected tenant ;

(*ac*) the conditions for grant of permission under section 10 for sub-division or alienation of land ; " ;

(*2*) for clause (*d*) the following shall be substituted, namely :—

" (*d*) the form of application for declarations under clauses (*a*), (*b*), (*c*) and (*d*), for a direction under clause (*e*) and for award or determination of compensation under clauses (*f*) and (*g*) of sub-section (*1*) of section 13 ; " ; and

(*3*) after clause (*d*) the following clauses shall be inserted, namely :—

" (*dd*) the form of application for determining reasonable rent under sub-section (*2*) of section 14A ;

(*de*) the manner of commutation of crop-share rent and rent in kind into cash under sub-section (*1*) of section 15A ; ".]

24. For sub-section (2) of section 27 of the said Act, the following shall be substituted, namely :—

" (2) In particular and without prejudice to the generality of the foregoing provisions, such rules may provide for the following matters :—

(a) the manner in which the crop share payable to a landlord as rent may be appraised ;

(b) the form of application for a declaration under sub-section (1) of section 2A ;

(c) the form of application for a declaration under sub-section (1) of section 3A that the tenant is not a protected tenant ;

(d) the conditions for grant of permission under section 10 for sub-division of land ;

(e) the value of the Court fee stamp payable on an application to the Mamlatdar or an appeal to the Civil Judge (Senior Division) under section 12 ;

(f) the other factors to be taken into consideration for determining reasonable rent under section 12 ;

(g) the form of application for declarations under clauses (a) and (b), for a direction under clause (c) and for award or determination of compensation under clauses (d) and (e) of sub-section (1) of section 13 ;

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(*h*) *the form of application for determining reasonable rent under sub-section* (*2*) *of section 14A ;*

(*i*) *the manner of determining the value of the crop for the purposes of the proviso to sub-section* (*1*) *of section 15 ;*

(*j*) *the manner of commutation of crop-share rent into cash under sub-section* (*1*) *of section 15A ;*

(*k*) *the fees to be paid for the grant of a certificate and the form of such certificate under sub-section* (*3*) *of section 18 ;*

(*l*) *the manner and the form in which a receipt is to be given by the landlord under section 22 ;*

(*m*) *the form of application for possession of land or dwelling house and the manner in which the enquiry shall be held under section 24 ;*

(*n*) *any other matter which is or may be prescribed under this Act.*"

Insertion of new section 28A in Bom. XXIX of 1939.

25. After section 28 of the said Act, the following new section shall be inserted, namely :—

Delegation of powers.

"28A. The Provincial Government may, subject to such restrictions and conditions as it may impose, by notification in the *Official Gazette* delegate to any of its officers, *not below the rank of an Assistant or Deputy Collector*, all or any of the powers conferred on it by this Act."

STATEMENT OF OBJECTS AND REASONS.

The Bombay Tenancy Act, 1939, was passed by the Legislature and, after having received the assent of the Governor General, was first published and became law on 2nd April 1940. Under the scheme of the Act, as it was passed by the Legislature, the Act was to come into force on such date as the Provincial Government may appoint by notification in the Official Gazette as laid down in sub-section (*3*) of section 1. As a result of the suspension of constitutional Government, this important measure of agrarian legislation was not applied to the whole Province as it had been intended and powers were taken by the Governor's Act VII of 1941 to permit the gradual and piecemeal application of the Act to selected areas. The Act was accordingly applied from 1st April 1941 to the districts of Surat, Thana, West Khandesh and Dharwar and all Partially Excluded Areas in the Province. It is necessary to repeal and re-enact sections 2 to 7 of the Bombay Tenancy (Amendment) Act, 1941, to validate the gradual and piecemeal application of the Act.

2. Though the Act has now been applied to the whole Province with effect from 11th April 1946, the gradual and piecemeal application of the Act makes it necessary to make certain changes in the relevant dates given under the various sections of the Act, e.g., sections 3 and 4.

3. The experience of the working of the Act in the limited areas to which it has been applied since 1st April 1941, has shown that the rights conferred on the tenants and the liabilities imposed on the landlords have not been effectively enforced, as the tenant is too ignorant and illiterate and too much under the control of the landlord or the sowkar to assert his rights against the landlord or to enforce the liabilities imposed on the landlord under the Act. It is therefore necessary, if the rights conferred on tenants are to be effectively asserted and the liabilities imposed on the landlord effectively enforced, to modify the relevant provisions of the Act, to shift on the landlord the onus of proving that the tenant is not entitled to certain rights conferred on him by the Act and to prescribe penalties for the failure of the landlord to discharge the liabilities imposed on him by the Act.

The present Bill is intended to secure the above objects.

11th July 1946. MORARJI DESAI.

The following Act of the Bombay Legislature having been assented to by the Governor on the 5th November 1946 is hereby published for general information.

P. N. MOOS,
Secretary to the Government of Bombay,
Legal Department.

BOMBAY ACT No. XXVI OF 1946.

(First published, after having received the assent of the Governor, in the "Bombay Government Gazette" on the 7th November 1946.)

An Act to re-enact the Bombay Tenancy (Amendment) Act, 1941, and to amend the Bombay Tenancy Act, 1939.

26 Geo. 5, Ch. 2. Bom. VII of 1941.

WHEREAS in view of the provisions of sub-section (*4*) of section 93 of the Government of India Act, 1935, it is expedient to re-enact the Bombay Tenancy (Amendment) Act, 1941;

Bom. XXIX of 1939.

AND WHEREAS it is expedient to amend the Bombay Tenancy Act, 1939, for the purposes hereinafter appearing;
It is hereby enacted as follows:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Bombay Tenancy (Amendment) Act, 1946.

(*2*) It extends to the whole of the Province of Bombay except the City of Bombay.

(*3*) It shall come into force on such date as the Provincial Government may by notification in the *Official Gazette* appoint in this behalf.

Bom. VII of 1941.

Repeal and re-enactment of sections 2 to 7 of Bom. VII of 1941.

2. Sections 2 to 7 of the Bombay Tenancy (Amendment) Act, 1941, are repealed and re-enacted.

Bom. XXIX of 1939.

Amendment of section 2 of Bom. XXIX of 1939.

3. In section 2 of the Bombay Tenancy Act, 1939, (hereinafter called "the said Act"),—

(*a*) in clause (1), the words "grass or" shall be deleted;

(*b*) after clause (10), the following new clause shall be inserted, namely :—

"(10A) 'To cultivate' means to carry on any agricultural operation." ;

(*c*) in sub-clause (*iii*) of clause (11) for the words "by servants or" the words "by servants on wages payable in cash or kind but not in crop share or by" shall be substituted.

Insertion of new Chapter IA in Bom. XXIX of 1939.

4. After section 2 of the said Act, the following new Chapter shall be inserted, namely :—

"CHAPTER IA.

TENANTS.

Tenants.

2A. (*1*) A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not—

(*a*) a member of the owner's family, or

(*b*) a servant on wages payable in cash or kind but not in crop share or a hired labourer cultivating the land under the personal supervision of the owner or any member of the owner's family,

unless the owner has within one year of the coming into force of the Bombay Tenancy (Amendment) Act, 1946, Bom. XXVI of 1946. made an application to the Mamlatdar within whose jurisdiction the land is situated for a declaration that the person is not a tenant.

(*2*) Where an application under sub-section (*1*) has been made and the Mamlatdar refuses to make such declaration and the Mamlatdar's decision is not set aside by the Collector in appeal under sub-section (*3*) of section 13 or by the Provincial Government under section 28, the person shall be deemed to be a tenant for the purposes of this Act."

Amendment of section 3 of Bom. XXIX of 1939.

5. In section 3 of the said Act—

(1) for clause (*i*) the following shall be substituted, namely :—

"(*a*) he has held such land continuously for a period of not less than six years immediately preceding either—

(*i*) the first day of January 1938, or

(*ii*) the first day of January 1945 ; and" ;

(2) clause (*ii*) shall be lettered as clause (*b*) ;

(3) in Explanations I and II after the words and figures "the first day of January 1938" the words and figures "or the first day of January 1945, as the case may be," shall be inserted.

Insertion of new section 3A in Bom. XXIX of 1939.

6. After section 3 of the said Act, the following new section shall be inserted, namely :—

Tenants on expiry of one year from coming into force of Bom. XXVI of 1946 to be deemed protected tenants.

"3A. (*1*) Every tenant shall, on the expiry of one year from the date of the coming into force of the Bombay Tenancy (Amendment) Act, 1946, be deemed to be a protected tenant for the purposes of this Act and his rights as such protected tenant shall be recorded in the Record of Rights, unless his landlord has within the said period made an application to the Mamlatdar within whose Bom. XXVI of 1946.

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jurisdiction the land is situated, for a declaration that the tenant is not a protected tenant.

(2) Where an application under sub-section (1) has been made and the Mamlatdar refuses to make such declaration and the Mamlatdar's decision is not set aside by the Collector in appeal under sub-section (3) of section 13 or by the Provincial Government under section 28, the tenant shall be deemed to be a protected tenant for the purposes of this Act and his rights as such protected tenant shall be recorded in the Record of Rights."

Amendment of section 4 of Bom. XXIX of 1939.

7. In section 4 of the said Act—

(a) in sub-section (1)—

(1) for the first paragraph the following shall be substituted, namely :—

"Every tenant shall be deemed to be a protected tenant for the purposes of this Act, if he—

(a) held any land and cultivated it personally continuously for a period of not less than six years immediately preceding the first day of April 1937 and was evicted from such land on or after such date otherwise than by order of a competent court on any of the grounds specified in sub-section (2) of section 5, or,

(b) held any land and cultivated it personally continuously for a period of not less than six years immediately preceding the first day of April 1944 and was evicted from such land on or after such date otherwise than by order of a competent court on any of the grounds specified in sub-section (2) of section 5 ;

(2) in the proviso after the words "such rent" the words, brackets and letter "in cases falling under clause (a)" shall be inserted and after the words "is situated" the words, brackets, letter and figures "and in cases falling under clause (b) within six months from the date on which the Bombay Tenancy (Amendment) Act, 1946, comes into force" shall be added ;

Bom. XXVI of 1946.

(b) in sub-section (2)—

(1) after the words "to the landlord" the words, brackets, letter and figure "in cases falling under clause (a) of sub-section (1)" and after the words "is situated" where they occur for the first time the words, brackets, letter and figures "and in cases falling under clause (b) of sub-section (1) within one year after the coming into force of the Bombay Tenancy (Amendment) Act, 1946," shall be inserted ; and

Bom. XXVI of 1946.

(2) for clauses (a) and (b) the following shall be substituted, namely :—

"(a) in cases falling under clause (a) of sub-section (1)—

(i) if the land has been leased out by the landlord for a period expiring after the 31st day of May immediately following the date of the coming into force of this section in the area in which the land is situated, from the date on which such lease expires ; and

(*ii*) in other cases, from the 1st day of June immediately following the date of the coming into force of this section in the area in which the land is situated ;

(*b*) in cases falling under clause (*b*) of sub-section (*1*)—

(*i*) if the land has been leased out by the landlord for a period expiring after the 31st day of May immediately following the date of the coming into force of the Bombay Tenancy (Amendment) Act, 1946, from the date on which such lease expires ; and Bom. XXVI of 1946.

(*ii*) in other cases from the 1st day of June immediately following the date of the coming into force of the Bombay Tenancy (Amendment) Act, 1946." Bom. XXVI of 1946.

Amendment of section 5 of Bom. XXIX of 1939.

8. In sub-section (*2*) of section 5 of the said Act—

(1) for the word " fails " wherever it occurs the words " has failed " shall be substituted ;

(2) in clause (*a*) after the words " if any," the words, brackets, figures and letter " in cases falling under sub-clause (*i*) of clause (*a*) of section 3 " shall be inserted and the following shall be added at the end, namely :—

" and in cases falling under sub-clause (*ii*) of the said clause for the year ending on the 31st day of March of the year immediately preceding the year in which the Bombay Tenancy (Amendment) Act, 1946, comes into force, within six months from the date of the coming into force of the said Act " ; Bom. XXVI of 1946.

(3) in clause (*b*) after the words " any year " the words, brackets and letter " subsequent to the year referred to in clause (*a*) applicable to his case " shall be inserted ;

(4) after clause (*c*) the following new clause shall be added, namely :—

" (*cc*) has sub-divided the land ;"

Substitution of new section 7 for section 7 of Bom. XXIX of 1939. Landlord's right to determine protected tenancy.

9. For section 7 of the said Act, the following section shall be substituted, namely :—

" 7. (*1*) Notwithstanding anything contained in section 5, a landlord may terminate the tenancy of a protected tenant by giving him one year's notice in writing stating therein the reasons for such termination if the landlord *bona fide* requires the land for any of the following purposes, namely :—

(*a*) for cultivating personally ; or

(*b*) for any non-agricultural purpose.

(*2*) If after the landlord takes possession of the land after the termination of the tenancy under sub-section (*1*), he fails to use it for any of the purposes mentioned in sub-section (*1*) within one year from the date on which he

took possession or ceases to use it at any time for any of the aforesaid purposes within 12 years from the date on which he took such possession, the landlord shall forthwith restore possession of the land to the tenant whose tenancy was terminated by him, unless he has obtained from the tenant his refusal in writing to accept the tenancy on the same terms and conditions or has offered in writing to give possession of the land to the tenant on the same terms and conditions and the tenant has failed to accept the offer within three months of the receipt thereof.

(*2A*) Where a landlord intends to lease out any land, he shall first offer in writing the tenancy of such land to the protected tenants whose tenancies have been terminated by him under sub-section (*1*) and forthwith give possession of the land to any one of them who within three months of the communication of the offer to him expresses his willingness to accept the tenancy whether at an agreed rent or subject to the determination of the rent under section 12.

(*3*) If a landlord after taking possession of the land after the termination of the tenancy under sub-section (*1*) on the ground that he requires it for the purpose of personal cultivation, dies leaving as his heir, a widow or a minor or a person who is subject to mental or physical disability, such heir shall be deemed to cultivate the land personally, if such land is cultivated by her or his servants or by hired labour.

(*4*) After the tenant has recovered possession under sub-section (*2*) he shall, subject to the provisions of this Act, hold such land on the same terms and conditions on which he held it at the time his tenancy was terminated.

(*5*) If at any time the tenant makes an application under section 13 to the Mamlatdar and satisfies him that the landlord has failed to comply within a reasonable time with the provisions of sub-section (*2*) or (*2A*), as the case may be, the tenant shall be entitled on a direction by the Mamlatdar to obtain immediate possession of the land and to such compensation as may be awarded by the Mamlatdar for any loss caused to the tenant by eviction and by failure on the part of the landlord to restore or give possession of the land to him as required by sub-section (*2*) or (*2A*), as the case may be :

Provided that no compensation shall be awarded under this sub-section to a tenant whose tenancy was terminated under a decree or order of a competent court, if such court has recorded a finding at the time of the passing of such decree or order that the land was required *bona fide* by the landlord for any of the purposes specified in sub-section (*1*).

Explanation I.—In cases falling under clause (*a*) of sub-section (*1*) of section 4 any notice given before the commencement of this Act, and in cases falling under clause (*b*) thereof any notice given before the commencement of the Bombay Tenancy (Amendment) Act, 1946, for the termination of the tenancy of a protected tenant, shall not be deemed to be a valid notice for the purposes of sub-section (*1*). Bom. XXVI of 1946.

Explanation II.—For the purposes of this section a tenant shall include his heir as specified in sub-section (*3*) of section 9."

Amendment of section 8 of Bom. XXIX of 1939.

10. In section 8 of the said Act, in sub-section (*1*) for the words "on eviction" the words "before eviction" shall be substituted.

Amendment of section 9 of Bom. XXIX of 1939.

11. In section 9 of the said Act, in sub-section (*2*) for the word "four" the word "six" shall be substituted.

Substitution of new section 10 for section 10 of Bom. XXIX of 1939.

12. For section 10 of the said Act, the following section shall be substituted, namely:—

Sub-division not to be recognised.

"10. No sub-division of a land held by a protected tenant shall be recognised and any such sub-division shall make the tenancy liable to termination."

Amendment of section 12 of Bom. XXIX of 1939.

13. In section 12 of the said Act, in sub-section (*9*) for the word "Act" the word "section" shall be substituted.

Amendment of section 13 of Bom. XXIX of 1939.

14. For sub-sections (*1*) and (*2*) of section 13 of the said Act, the following sub-sections shall be substituted, namely:—

Application for declaration, direction and compensation.

"(*1*) An application—

(*a*) for a declaration under section 2A that the person cultivating any land is not a tenant;

(*b*) for a declaration under section 3A that a tenant is not a protected tenant;

(*c*) for a direction for obtaining possession of land under sub-section (*5*) of section 7;

(*d*) for award of compensation under sub-section (*5*) of section 7;

(*e*) for determining under section 8 compensation for improvements made to a land;

shall be made to the Mamlatdar in whose jurisdiction the land is situated. Such application shall be made in such form as may be prescribed.

(2) On receipt of such application, the Mamlatdar shall hold an inquiry and shall either make or refuse to make the declaration as specified in clause (*a*) or (*b*), as the case may be, make the direction as specified in clause (*c*), award compensation, if any, payable to the tenant as specified in clause (*d*) or determine the compensation payable to the tenant as specified in clause (*e*), as the case may be, after following as far as is practicable the procedure prescribed in section 12.

(*2A*) The Mamlatdar shall record his reasons for his decision under sub-section (*2*)."

15. In Chapter III of the said Act, the following new section shall be inserted at the beginning, namely :— Insertion of new section 13A in Bom. XXIX of 1939.

"13A. The provisions of sections 5, 6, 10 and 11 shall apply to all tenants." Sections 5, 6, 10 and 11 to apply to all tenants.

16. In sub-sections (*1*) and (*2*) of section 14 of the said Act, after the word "rate," the words "vero; huk," shall be inserted. Amendment of section 14 of Bom. XXIX of 1939.

17. After section 14 of the said Act, the following new section shall be inserted, namely :— Insertion of new section 14A in Bom. XXIX of 1939.

"14A. (*1*) The rent payable by a tenant other than a protected tenant shall be the rent agreed upon between such tenant and his landlord. Where there is a dispute as regards the reasonableness of the rent payable according to such agreement the rent payable shall be the reasonable rent determined under sub-section (*2*). Determination of reasonable rent.

(*2*) For the determination of reasonable rent under sub-section (*1*) either the tenant or the landlord may apply in writing to the Mamlatdar within whose jurisdiction the land is situated. Such application shall be in such form as may be prescribed. Thereupon the provisions contained in sub-sections (*2*) to (*11*) of section 12 shall, so far as may be, apply."

18. To sub-section (*1*) of section 15 of the said Act, the following proviso shall be added, namely :— Amendment of section 15 of Bom. XXIX of 1939.

"Provided that the maximum rate of rent shall not exceed in the case of irrigated lands one-fourth, and in the case of other lands one-third of the crop or its value determined in the prescribed manner."

Insertion of new section 15A in Bom. XXIX of 1939.

19. After section 15 of the said Act, the following new section shall be inserted, namely :—

Commutation of crop-share rent into cash.

"15A. (*1*) The Provincial Government may from time to time, by notification in the *Official Gazette* declare that rents payable wholly or partly as a crop-share in any area to which the notification applies shall, with effect from a date specified in the notification, which shall not be earlier than 6 months from the date of the notification, be commuted into cash in the manner prescribed.

(*2*) Notwithstanding anything contained in any agreement, usage, decree or order of a Court or any orders of the Provincial Government under section 15, no landlord in any area in respect of which a notification has been issued under sub-section (*1*) shall recover any rent by way of crop-share or in excess of the commuted cash rent after the date specified in such notification under sub-section (*1*).

(*3*) If any landlord recovers any rent by way of crop-share or in excess of the commuted cash rent, he shall, on conviction, be punishable with fine which may extend to Rs. 1,000.

(*4*) Every notification under sub-section (*1*) shall be placed before each Chamber of the Provincial Legislature and shall be liable to be rescinded or modified by a resolution passed during the next following session by both Chambers."

Amendment of section 17 of Bom. XXIX of 1939.

20. In sub-section (*1*) of section 17 of the said Act, for the words "in any alienated village or village held on khoti or talukdari tenure," the words "in any village," shall be substituted.

Amendment of section 19 of Bom. XXIX of 1939.

21. In sub-section (*1*) of section 19 of the said Act, the first proviso and the word "further" in the second proviso shall be deleted and the following shall be added as a new proviso, namely :—

"Provided further that the landlord shall, during the continuance of the tenancy, be entitled to the rent of the land as if the trees had not been planted."

Substitution of new section 20 for section 20 of Bom. XXIX of 1939.

22. For section 20 of the said Act, the following shall be substituted, namely :—

Relief against termination of tenancy for non-payment of rent.

"20. Where any tenancy of any land held by any tenant is terminated for non-payment of rent and the landlord sues or files any proceeding to eject the tenant, the Court shall call upon the tenant to tender to the

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landlord the rent in arrears together with the cost of the suit or proceeding or to give such security as it thinks fit for making such payment within 15 days; and if the tenant complies with such direction within 15 days, the Court shall, in lieu of making a decree or passing an order for ejectment pass an order directing that the tenancy had not been terminated, and thereupon the tenant shall hold the land as if the tenancy had not been terminated:

Provided that nothing in this section shall apply to any tenant whose tenancy is terminated for non-payment of rent if he has failed for any three years to pay rent within the period specified in clause (*b*) of sub-section (*2*) of section 5."

Substitution of new section 23 for section 23 of Bom. XXIX of 1939.

23. For section 23 of the said Act, the following shall be substituted, namely :—

No lease to be granted for less than 10 years and every lease to be deemed to be for 10 years.

" 23. (*1*) (*a*) No lease of any land situated in any area in which this section comes into force made after the date of the coming into force of this section in such area, shall be for a period of less than 10 years; and

(*b*) every lease subsisting on the said date or made after the said date in respect of any land in such area shall be deemed to be for a period of not less than 10 years.

(*2*) Notwithstanding any agreement, usage or law to the contrary, no such lease as is specified in clause (*b*) of sub-section (*1*) shall be terminated before the expiry of a period of 10 years only on the ground that the period of the lease has expired:

Provided that any such lease as is specified in clause (*b*) of sub-section (*1*) may be terminated by a tenant before the expiry of a period of 10 years by surrendering the lease.

(*3*) Any landlord who contravenes the provisions of sub-section (*1*) or (*2*) shall, on conviction, be punishable with fine, which may extend to Rs. 1,000."

Amendment of section 24 of Bom. XXIX of 1939.

24. In section 24 of the said Act—

(*a*) in sub-section (*1*) for the word " person " the word " tenant " shall be substituted;

(*b*) after sub-section (*1*) the following new sub-section shall be inserted, namely :—

" (*1A*) No landlord shall obtain possession of any land held by a tenant except under an order of the Mamlatdar. For obtaining such order he shall make an application in the prescribed form."

(*c*) in sub-section (*2*) for the words " such application " the words, brackets, figures and letter " application under sub-section (*1*) or (*1A*) " shall be substituted.

Amendment of section 26 of Bom. XXIX of 1939.

25. In section 26 of the said Act, the words and figures " except the proviso to section 23 " shall be deleted.

Amendment of section 27 of Bom. XXIX of 1930.

26. For sub-section (*2*) of section 27 of the said Act, the following shall be substituted, namely :—

"(*2*) In particular and without prejudice to the generality of the foregoing provisions, such rules may provide for the following matters :—

(*a*) the manner in which the crop-share payable to a landlord as rent may be appraised ;

(*b*) the form of application for a declaration under sub-section (*1*) of section 2A ;

(*c*) the form of application for a declaration under sub-section (*1*) of section 3A that the tenant is not a protected tenant ;

(*d*) the value of the court fee stamp payable on an application to the Mamlatdar or an appeal to the Civil Judge (Senior Division) under section 12 ;

(*e*) the other factors to be taken into consideration for determining reasonable rent under section 12 ;

(*f*) the form of application for declarations under clauses (*a*) and (*b*), for a direction under clause (*c*) and for award or determination of compensation under clauses (*d*) and (*e*) of sub-section (*1*) of section 13 ;

(*g*) the form of application for determining reasonable rent under sub-section (*2*) of section 14A ;

(*h*) the manner of determining the value of the crop for the purposes of the proviso to sub-section (*1*) section 15 ;

(*i*) the manner of commutation of crop-share rent into cash under sub-section (*1*) of section 15A ;

(*j*) the fees to be paid for the grant of a certificate and the form of such certificate under sub-section (*3*) of section 18 ;

(*k*) the manner and the form in which a receipt is to be given by the landlord under section 22 ;

(*l*) the form of application for possession of land or dwelling house and the manner in which the enquiry shall be held under section 24 ;

(*m*) any other matter which is or may be prescribed under this Act."

Insertion of new section 28A in Bom. XXIX of 1930.

27. After section 28 of the said Act, the following new section shall be inserted, namely :—

Delegation of powers.

"28A. The Provincial Government may, subject to such restrictions and conditions as it may impose, by notification in the *Official Gazette*, delegate to any of its officers, not below the rank of an Assistant or Deputy Collector, all or any of the powers conferred on it by this Act."

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